

FCC MAIL SECTION

AUG 6 2:12 PM '98
Federal Communications Commission

DA 98-1424

DISPATCHED BY
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Lufkin, Texas))
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)MM Docket No. 98-135
RM-9300**NOTICE OF PROPOSED RULE MAKING****Adopted: July 22, 1998****Released: July 31, 1998****Comment Date: September 21, 1998**
Reply Date: October 6, 1998

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Russell L. Lindley ("Lindley"), proposing the allotment of Channel 261 at Lufkin, Texas. Lindley indicated that he would file an application for Channel 261A at Lufkin if the channel is allotted to the community.¹

2. In support of its request, Lindley states that Lufkin is a community for allotment purposes. Lindley points out that Lufkin is an incorporated community with its own elected government and that Lufkin is listed in the 1990 U.S. Census with a population of 30,206 persons.

3. We believe the proposal warrants consideration because the proposed allotment would provide additional broadcast service to Lufkin. A staff engineering analysis indicates that Channel 261A can be allotted to Lufkin consistent with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 8.5 kilometers (5.3 miles) south of the community.² The site restriction will prevent a conflict with Station KGRI,

¹ Lindley also filed a petition requesting the allotment of Channel 230A at Lufkin, Texas (RM-9301). Lindley indicated his intention to file an application for Channel 230A and states that he will demonstrate compliance with the Commission's ownership rules, if necessary.

² The coordinates for Channel 261A at Lufkin are 31-16-13 and 94-43-50.

Channel 260A, Mount Enterprise, Texas, and Station KDVE, Channel 260C3, Henderson, Texas.³

4. In view of the fact that the proposed allotment could provide additional broadcast service to Lufkin, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 261A to Lufkin, Texas. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Lufkin, as follows:

Community	Channel No.	
	Present	Proposed
Lufkin, Texas	257C2, 286C	257C2, 261A, 286C

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **September 21, 1998**, and reply comments on or before **October 6, 1998**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Howard J. Barr
Patricia M. Chuh
Lee G. Petro
Pepper & Corazzini, L.L.P.
1176 K Street, N. W., Suite 200
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7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from

³ A less restrictive site may be available when Station KGRI, Mount Enterprise, is licensed at its specified site and Station KDVE, Henderson, Texas, is licensed at Tatum, Texas.

the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.